

Examining South Carolina's Marina Permitting Criteria:

How Should Regulators Evaluate Need?

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March 25, 1993

BACKGROUND

The past two decades have seen a great increase in boat sales and marina development. There are currently more than 10 million registered boats and more than 9,000 marinas in the United States (National Marine Manufacturers Association, 1991). The late '80s and early '90s brought troubled times to the boating industry, however. The luxury tax on boats over \$100,000 discouraged potential boat customers and made it all the more expensive for people that already owned boats to keep them. More importantly, the nation was experiencing a recession, and because boating is generally considered to be a luxury, the industry was one of the first to suffer. Although things are looking up for the industry, as the economy is forecasted to strengthen and there is discussion of repealing the luxury tax, there are still many doubts as to whether the boating industry will ever gain the momentum it had during the '70s and '80s. This is one of the factors that regulatory agencies must take into account when evaluating a new marina permit.

In South Carolina, marina developers must receive three different approvals before construction can begin. First, they must get a '401 Water Quality Certification' from the State Department of Health and Environmental Control. This states that the operation will not significantly impact the surrounding water quality. Then a developer must receive a permit from the South Carolina Coastal Council [SCCC]. Applications are evaluated almost entirely on the basis of environmental protection and concern with the exception of the next to the last clause

in the Marina Location and Design section [30-12 (E) (4) 0)] of the "SCCC Regulations for Permitting in Critical Areas of the State's Coastal Zone" (1991). It reads:

Applications for construction of marina and commercial dock facilities will be considered by the Council only after adequate demonstration by the applicant of demand for the facilities.

Finally, the developer must receive a "Department of Army Permit" from the United States Army Corps of Engineers. This federal permit is granted only after environmental and economic impacts are evaluated. In the January 16, 1993 revision of the "SCCC Regulations," the Council specifically deleted the word 'demand' and replaced it with the words 'the need'. Current members of the Council do not remember the exact explanation for this amendment. Regardless of the wording, however, a great deal of controversy has arisen over the requirement to demonstrate demand or need.

Before November 1991, proving demand for a proposed facility was considered to be fairly routine and self-explanatory. Particularly before Hurricane Hugo (I 989) marina occupancy rates were relatively high and boater registrations were increasing. Moreover, few developers would be eager to invest millions of dollars in a project where there was little demand for it, so it was expected that the developers would complete a market analysis for the project prior to the application ever being submitted. As long as a reasonable degree of demand and/or need were demonstrated, the Council would continue to review the application. But on November 20, 1991, the Council and D & D Enterprises were taken before the South Carolina Supreme Court by the Concerned Citizens Committee for the Ashley River (Concerned Citizens, 1991). The Citizens Committee was appealing a decision made by the Council which granted D & D Enterprises a marina permit. Although there were many disputed issues, the Court eventually based its reversal of the permit on its judgment that nowhere in the application did D & D Enterprises show a demand for the facility. This unprecedented focus surprised many involved with the case, not the least of these being the Council members who had thought that the applicant did show a demand. Since this decision there has been a lot of confusion as to what exactly 'demand', and now 'need', is; how applicants should be required to prove it; and in what manner the Council plans to evaluate this aspect of the application.

The purpose of this paper is to research the many implications of need and demand as they relate to the marina industry. It includes a compilation of various opinions and suggestions by those involved with marina development. The paper has been written with the intent of presenting and clarifying some of the controversy associated with demonstrating need and will hopefully assist the Coastal Council in its future permitting process.

DEMAND V. NEED

The Council members cannot recall specifically why the "demand" clause was changed to "need." The State Court gave no clarification on these two words which it used interchangeably in

the D & D Enterprise case records. It is necessary to define these words so that policy makers can distinguish between them.

Almost everyone interviewed agreed that the regulation inferred an *economic* demand or need, so the two words will be explained with that in mind. "Demand" is defined by economists as "the desire, ability, and willingness of an individual to purchase a good or service" (Greenwald, 1984, p. 92). "Need" is more complicated because it is based on judgment or values. The *Webster's New World Dictionary* defines "need" as "something useful, required, or desired that is lacking" (1970, 951). If the Council used this definition for its needs criteria, it would be granting permits right and left. Because 'need' is so ambiguous, most economists prefer to use the term 'demand' whenever possible. Economist, Friedrich von Wieser relates the two words, saying that "demand is the narrower concept of need" (1927, 21). 'Demand' is also more quantifiable and objective because it is based on action (what a person will pay for something desired) versus 'need' which is based on values (what a person must have).

When evaluating a marina permit, the Army Corps of Engineers considers both 'demand' and 'need'. There are two kinds of need that the Corps assesses: private and public (Riggs, Pers. Comm., 1993). Private need would include a developer's economic livelihood and the marina's ability to attract families to a nearby residential development. Public need for a marina would include such factors as increased public access to the water, increased tourism, and an increased tax base. According to Bob Riggs, Assistant Chief of the Regulatory Branch, the Corps determines 'demand' and 'need' in a subjective manner. As long as the developer can make a reasonable economic case for the marina, the Corps will not deny the application on the grounds of need.

It is at the state level that 'need' is considered so complex. Many in the local marina industry, including some members of the Council as well as the State Court, consider 'need' to be just another word for 'demand'. But the problem lies in the fact that "need" carries so many different connotations, and that everyone involved in marinas is not at a consensus as to what 'need' should mean. There are some that infer 'need' as more general than an economic demand. The manager of Skull Creek Marina in Hilton Head, Ray Faust, believes that if the marina "provides an asset to the community," it demonstrates a need. Jon Guelry Taylor, a marina consultant and engineer, suggests that a marina's usefulness in hurricane salvage operations be considered a public need. When the Southport Marina was proposed in Wisconsin, one of the 'needs' factors that officials examined was that it would be a "catalyst" for development and investment in the downtown area.

The variety of interpretations above confirm that the term 'need' is vague and will be difficult to measure objectively. 'There are so many non-economic factors that come into play when discussing 'need', whereas 'demand' is limited to an economic interpretation. It would be inaccurate to use the two as synonyms. The Council needs to decide what exactly it wants the marina applicant to demonstrate. If the Council members want to see an economic- demand for the proposed facility, then call it 'demand'. If they continue to refer to it as 'need', then they need

to clarify specifically what demonstrating 'need' entails. Otherwise, applicants will take this ambiguity into their own hands, and if they are unhappy with the Council's decision, they will take a case before the court.

WHAT IS THE COUNCIL'S RESPONSIBILITY?

Before we discuss how the Council could evaluate demand or need, we should discuss if this task is even its responsibility. The Council was founded with the mission of protecting the environment, increasing the public's access to water, and controlling careless development. With this in mind, does the Council have the right to require a marina applicant to show need? Other beginning businesses are not required by the government to demonstrate need. Moreover, very few state governments besides South Carolina's, North Carolina's, and

Delaware's ask for anything resembling a market study before they will grant a marina permit. Most states' coastal involvement is completely environmental.

Neil Robinson, the attorney for the proposed Andell Lock Marina, supports the Council's decision to consider a facility's need in the permitting process: "You can't look at things in a vacuum; you have to look at the economics" (Pers. Comm., 1993). Most of those interviewed agreed that the state has the right to require a study of the local demand for a project before it is permitted. This has not always been the dominant opinion, however. Many used to believe that if a marina developer had demonstrated enough demand to convince a bank (or other lender) to invest millions of dollars into a development, then there must have been an ample market. The problem was that many lenders did not require a market study--or did not read them carefully when they did--and dozens of waterfront developments have flopped over the past two decades.

The Port Royal marina is a prime example. When it was first built, the president of the Sierra Club said that he wished all marinas were as environmentally conscious and as ideally located as this one was (Taylor, Pers. Comm., 1993). But it was not long before the developer realized that he had not gotten enough research on his market. To begin with, the marina was situated inland, away from the Intracoastal Waterway, where it would not be patronized by many transients. Furthermore, the locals were extremely independent by nature and preferred private docks to community ones. There simply was not a great demand for a marina in that particular area, regardless of its environmentally strategic site. As marina consultant, Jon Guerry Taylor remarked, "It was an environmental success, but an economic failure" (Pers. Comm., 1993).

Marinas such as Bulls Bay, which was never even completed due to lack of revenues, and Skull Creek in Hilton Head are other examples of poor planning. Marina developers are often so ambitious that they are blind to the reality of a limited market. Marina consultant and engineer, G. Robert George, maintains that developers should have to write down what they are enthusiastically saying to regulators. That way, even if a risky marina is permitted, the developers would know the financial dangers involved in the marina industry (Pers. Comm., 1993).

George also believes that the Council has the responsibility to evaluate a marina on its proposed revenues. "For there to be a true economic need, a marina would have to stand on its own without any subsidy from other resort amenities, and it would have to make a profit." He compares the issue to the national banking scandal. "If someone would have questioned all of those S & Ls, we wouldn't be paying off their loans."

But does the Council have a right to demand every marina development to make a profit? In other words, should the Council deny a marina permit on the basis that it may not be financially successful? Economist Diana Permar claims that "if they aren't hurting the environment, it's none of the Council's business whether the developers make a profit" (Pers. Comm., 1993). In every government there exists the everlasting question of whether the free market is the most efficient way to take care of consumer demand. The state's waters may be a public good and may need environmental protection, but the marina business is still a private industry for the most part, and it would suffer from this kind of interference.

For example, suppose there is a developer who demonstrates a reasonable demand for a facility, but there is already another marina in the area that would be sharing the same market and could prevent the new marina from making a profit. If the Council denied the permit on the basis that the new marina might not survive, it would only be allowing a monopoly to exist which would not be in the public's best interest. Competition is generally healthy because it causes firms to become more efficient and prices to decrease.

Although most of those interviewed agree that permits should not be evaluated on the basis of profit, they do feel strongly about the requirement to demonstrate demand. Requiring a market study is believed to be fair, whereas requiring a profit forecast is considered to be out of the Council's jurisdiction and probably inaccurate anyway. Profit is difficult to determine in advance because so much of it has to do with management as well as with the overall economy. Coastal waters are a valuable, limited resource that should be allocated efficiently, but there is only so much the state can do on its own to ensure this.

WHEN SHOULD NEED BE DETERMINED?

The *SCCC Regulations* state that: "Applications... will be considered by the Council *only after* adequate demonstration by the applicant of the need for the facilities" (I 993, emphasis added). Need may be evaluated before the rest of the application, but it is all done at one time, in one hearing. Robinson suggests that the Council hold a preliminary hearing specifically for evaluating need. He claims that his clients are spending tens of thousands of dollars on predevelopment surveys and environmental testing, and that this money will all be wasted if the Council denies their application due to lack of need. This preliminary hearing would assure developers that they were over the first "hump" before they invested too heavily in their project. Permar thinks that this initial hearing would be "practical".

Environmental consultants, Duncan Newkirk and Ken Hance are wary of the idea, however (Pers. Comm., 1993). They feel that it would just add another layer to the permitting process which is already time consuming and expensive. If the Council does decide to hold a preliminary meeting, they urge the Council to include an appeal process in order to protect the developers' rights.

Granted, the preliminary hearing on need would put an additional strain on the Council. However, it may save the members some time in the long run if they could eliminate the cases up front that do not have a chance of passing the needs criteria.

HOW TO DETERMINE NEED

The Army Corps of Engineers evaluates the need for a marina in a subjective manner. As mentioned above, the Corps looks at both private and public need, and as long as some kind of need is shown to be adequate, the Corps does not deny the project on the basis of need. Because the Corps' decisions typically remain consistent with what the state decides, most of the pressure is on the Council to explore the needs issue. After all, the Council is the agency that will be taken to court if there are any disputes; a state agency is usually more easily contested than a federal office.

The Council is in a predicament where its only rescue will be to objectify the evaluation for need. As it stands now, the criteria can be judged on such a subjective basis that it is a target for citizens groups and denied developers. The first step the Council must take is to specifically define 'need'. Since most consider 'need' to be a generalized term for 'demand', much of this section will focus on methods for determining demand. It is important for the Council members to be familiar with these different methodologies so that they can understand the applicants' economic reports and ask effective questions during the permitting hearings.

The marinas that are proposed today tend to be amenities to future residential or resort developments. The developers claim that the new development will generate its own demand for a marina. They say it will be drawing from a wealthy group of people who are not yet boat owners, but who will buy boats once a nearby marina becomes available to them. Most economists are wary of the hypothesis that "supply creates its own demand." They would rather turn the argument around and ask, "if a marina is built, will there be sufficient demand for it?" (Fuguitt, Pers. Comm., 1993).

Population Growth and Profile

One way of attempting to answer this question is through a marina feasibility study. It starts by analyzing the market. There are several methods used to do this. First one must look at population growth patterns on a national, state, and regional level. It is also helpful to get a profile of the kinds of people moving into the area where the new marina will be located. For

example, does the area attract young urban professionals or lower class retirees? The Chamber of Commerce is a good resource for these statistics.

Boater Registration and Sales

The above information is useful in predicting future boating trends. Population and average real per capita income are the two factors that best explain the variation in boater registration, according to a 1982 study by Robert F. Goodwin. Examining boater registration trends as well as boat and trailer sales for the past several years develops a profile of the general boating market. The number and sizes of the boats sold during a year can be found in many boating magazines such as *Boating Industry*, *Marina Dock Age*, and *Boat and Motor Dealer*.

Waiting Lists

Once a general boating profile has been established, local market conditions should be studied. Marina waiting lists have been a conventional tool for determining demand in a particular region, but Taylor warns researchers to be cautious of their findings (Pers. Comm., 1993). He claims that waiting lists are only somewhat accurate because they exaggerate demand. For instance, some people put their names on waiting lists before they even own a boat in anticipation of one day buying one. Other people listed are currently mooring their boats at other marinas, but would prefer a slip at this more convenient or less expensive marina. These names are not people who currently have boats and are 'waiting' to dock them.

Another complication with this method involves municipal marinas. Since these marinas are subsidized, their rents are usually lower and there is always a demand for them, even when other nearby private marinas are not filled to capacity. Goodwin states that:

These [public marina] waiting lists [reveal] the number of people willing to rent moorage at a specific price, were it available. Theoretically, those boaters currently occupying moorage at higher rates would have their names on waiting lists at all facilities offering comparable moorage at a lower price (1982, p.28).

Waiting lists should only be used to determine demand if they are continually updated and maintained to represent the number of current boat owners who want a slip at a particular marina and at that marina's specific price.

Boater Surveys and Reservation Systems

Some researchers attempt to determine demand in a certain area by surveying local residents, or in the case of a new residential/marina development, people who are moving into the neighborhood. These people are asked if they would dock a boat if a nearby marina were to become available to them. The difficulty with this method is that people respond more

optimistically on the survey than they do after the marina has been built. Taylor estimates that one in ten families in these new developments actually dock a boat in the nearby facility compared to the three in ten who claimed they would (Pers. Comm., 1993).

Hugh Lane, Jr., president of the Bank of South Carolina, recommends that developers require a reservation fee from interested renters before the marina is built. Banks encourage real estate developers to demand a ten percent down nonrefundable reservation in order to guarantee that there is a demand. Lane suggests that a reservation system requiring ten percent down non-refundable or even half a year's rent up front would be a great way to quantify demand at that specific site and price. Even if the developer only had reservations on half or two-thirds of the slips, the reservation system would still be a strong indicator of substantial demand.

Occupancy Rates

As a potential investor, Lane says he would be persuaded more by the occupancy rates of local marinas than almost any other indicator of demand. There are several variables that should be recognized in this kind of survey. Occupancy varies over seasons, locations, how many bridges one must travel under to dock a boat, rental rates, public or private ownership, etc. These variations should be taken into consideration when evaluating occupancy rates and related to the specific development in question.

Time Frame

If occupancy rates are examined over a period of time in addition to population, registration, and sales trends, then they could prove useful in developing marina market projections. According to Newkirk, demand should be projected into the next ten years if possible because many developments do not even get off the ground for a good five years. Taylor recommends that "since the financing period will probably extend past the existing market (0-5 years) and ancillary marina uses such as commercial, residential, etc. may be involved, professional assistance may be required to evaluate potential (5-15 years) and projected (15-30 years) marina markets." (Pers. Comm., 1993, p.2).

Feasibility Study

After a sound market profile has been developed, a marina feasibility study would continue to analyze the market by calculating a local demand curve. This would show what the competitive boat slip rates were in the area. A feasibility study would also include a general "reality check" to inform the developer what costs (construction and operating) and revenues to expect, as well as whether there will be a decent return to the investors (Permar, Pers. Comm., 1993). There are many assumptions involved with doing almost any kind of projected economic analysis, and most feasibility studies are packed with them. Permar encourages regulatory agencies to inquire into

the assumptions and methodologies used in an economic analysis so that they can determine for themselves whether they seem fair and relatively accurate (Pers. Comm., 1993).

Who should do the study?

The fact is that many of the Council members know very little about economic analyses, and they do not know which assumptions or methodologies to question. Even more startling is that many of the people conducting these feasibility studies do not know what they are doing. Ronald E. Stroud, a Florida marina owner, expressed a concern over the so-called "professionals" that conducted many of the marina feasibility studies over the past two decades: "Anyone who was somewhat knowledgeable of the marina business could do a market feasibility study and submit it to a banker, but many of these 'professionals' have been threatened with liability suits" (1992). From his experience in the marina business, Newkirk stated that he had never known an economist to put their reputation on the line by deliberately 'fixing' one of these studies. This may be true, but as Permar explains, it is not very common to get an economist to conduct a marina study.

If the Council is going to require developers to quantify demand as part of the needs evaluation, then developers are going to have feasibility studies done. To make sure these studies are as accurate as possible, the Council is going to have to look into who is conducting them.

According to Permar, who has done a good many real estate and marina feasibility studies, developers often ask her to do "a study that will prove there is a demand for their project" (notice they did not ask for a feasibility study). Needless to say, some of them are disappointed. "If we do all of our homework, and the project is not feasible, that's what our report says. You would think that people want the truth, but they don't. They want their project to be approved."

Permar claims that many economic consultants have lowered their ethical standards: "Who do consultants have to keep happy? Who pays their bills? Consultants are going to be most loyal to who's paying them. I've told this to lenders who've been burned by this industry" (Pers. Comm., 1993). She recommends that the lenders pay for these studies because then the consultants would be loyal to them. In other words, consultants would be honest because that is what the lenders want. Of course, in the end, the developer is the real party paying for the consultant (much like they do with appraisers), but the lender is the actual person hiring. Permar maintains that "it just makes good business sense."

It would be great if lenders paid for the studies because then the Council could better trust the results. However, this is not the case, and it is not likely that it will be for quite some time. The Council could hire its own consultant to conduct feasibility studies for applying marina developments and then pass the bill on to the developer (much like Permar suggested with the bank lenders). However, this requirement would be sure to create opposition from the developers because they would no longer have a choice of who they were employing. Another option would be for the Council to develop a checklist for consultants that requires them to

follow certain respected methodologies and guidelines. This checklist could be compiled with the help of economic and market experts that the Council knows and trusts. Other than that, the Council would increase its effectiveness of evaluating need if it would just make an effort to become familiar with economic analysis.

Unfortunately, feasibility studies are the property of the developers who paid for them, and it is unlikely that they will release the entire report to the Council for its scrutiny. Much of this is due to the fact that once the study is released to the government, it is on public record and sections such as the competitive analysis could potentially harm the developer if it got into the wrong hands. Permar suggests that developers encourage their consultants to include more of their methodologies and assumptions in the summary which the Council usually receives.

Evaluating 'Need'

If the Council still insists on developers demonstrating 'need' versus 'demand', it will have to be somewhat subjective in the evaluation process. It would be difficult for developers to quantify their facility's 'need'. What probably would happen instead is that developers would create long lists of public benefits that their marina would bring to the community. The thing that is important to remember is that all marinas bring benefits to the public, regardless of their location or design. Marinas provide water access, recreation, aid to hurricane salvage operations, and jobs, not to mention multitudes of other economic spin-offs. Granted, some marinas may bring more benefits than others, so the Council should look closely at how compatible the new development would be with the community's goals (i.e. Is a city trying to attract wealthy residents? Is there a high unemployment rate?).

OVERALL RECOMMENDATIONS

One suggestion that was mentioned time and time again in the interviews was that marina construction should be permitted in stages, especially if there is a question of need. 'The Council has already done this with some marinas and should continue this practice. Reducing the number of proposed slips and allowing marinas to expand only when adequate demand has been demonstrated will prevent valuable resources from being wasted.

As mentioned before it is vital that the Council gain more familiarity with the economic side of 'need' if they truly want to objectify its evaluation. It is time that all governmental agencies begin taking an interdisciplinary approach to policy making. South Carolina should be commended in that it is one of the few coastal agencies along the eastern seaboard that even considers non-environmental factors in marina permitting.

One of the controversies that was discussed in the interviews was whether the 'need' criteria was not just a political tool to be used arbitrarily by the Council. Billy Edge, a marina engineer, believes that judging need is "just another method of strangling development that [the Council] doesn't want" (Pers. Comm., 1993). Edge supported the original requirement to demonstrate 'demand', but claims that the term 'need' is too subjective.

The Council would be wise in staying as far away from subjectivity as possible. The only way it will ever be able to defend its decisions in court is if it objectifies its entire permitting process, which includes the evaluation of need. If the Council cannot change the 'need' criteria back to 'demand', then it can at least add an amendment which defines 'need' specifically as 'economic demand'.

On a final note, marina permitting should become less and less of a major difficulty to the Council. The banking industry is developing more stringent guidelines for lending and is cautious of marina projects, in particular. Lane claimed that he did not think his bank would make a loan on a marina (Pers. Comm., 1993). In Stroud's study on banking he "found out that marinas are generally considered to be poor financial risk and that marina operators are assumed not to be professional enough to show a proper return on investment" (1992, p.2). It may be that investors make it so difficult for marina developers to get loans that much of the Council's pressure to evaluate marina permits will be alleviated.

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